

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 687**

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**Introduced by Assembly Member Roger Hernández**

February 21, 2013

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An act to amend Section 365.1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 687, as amended, Roger Hernández. Electricity.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. ~~However, other existing law suspends the right of retail end-use customers other than community choice aggregators, as defined, to acquire service from certain electricity suppliers, after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law. The act requires the commission to allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation's distribution service territory up to a specified maximum allowable total kilowatthours annual limit. The act requires the commission to undertake specified actions when authorizing additional direct transactions for retail nonresidential end-use customers. Statutes enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid~~

*by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation.*

*Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.*

*This bill would additionally require the commission to provide the highest priority to acquire electric services from other providers to entities treating and remediating groundwater that a federal, state, or local agency identifies as contaminated on a site listed as a Superfund site by the United States Environmental Protection Agency when authorizing additional direct transactions for retail nonresidential end-use customers. The bill would require the entity treating and remediating contaminated groundwater to use moneys saved as a result of the direct transaction for activities related to the treatment and remediation of the groundwater. Because a violation of this requirement is a crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 365.1 of the Public Utilities Code is  
2 amended to read:

1 365.1. (a) Except as expressly authorized by this section, and  
2 subject to the limitations in subdivisions (b) and (c), the right of  
3 retail end-use customers pursuant to this chapter to acquire service  
4 from other providers is suspended until the Legislature, by statute,  
5 lifts the suspension or otherwise authorizes direct transactions. For  
6 purposes of this section, “other provider” means any person,  
7 corporation, or other entity that is authorized to provide electric  
8 service within the service territory of an electrical corporation  
9 pursuant to this chapter, and includes an aggregator, broker, or  
10 marketer, as defined in Section 331, and an electric service  
11 provider, as defined in Section 218.3. “Other provider” does not  
12 include a community choice aggregator, as defined in Section  
13 331.1, and the limitations in this section do not apply to the sale  
14 of electricity by “other providers” to a community choice  
15 aggregator for resale to community choice aggregation electricity  
16 consumers pursuant to Section 366.2.

17 (b) The commission shall allow individual retail nonresidential  
18 end-use customers to acquire electric service from other providers  
19 in each electrical corporation’s distribution service territory, up to  
20 a maximum allowable total kilowatthours annual limit. The  
21 maximum allowable annual limit shall be established by the  
22 commission for each electrical corporation at the maximum total  
23 kilowatthours supplied by all other providers to distribution  
24 customers of that electrical corporation during any sequential  
25 12-month period between April 1, 1998, and the effective date of  
26 this section. Within six months of the effective date of this section,  
27 or by July 1, 2010, whichever is sooner, the commission shall  
28 adopt and implement a reopening schedule that commences  
29 immediately and will phase in the allowable amount of increased  
30 kilowatthours over a period of not less than three years, and not  
31 more than five years, raising the allowable limit of kilowatthours  
32 supplied by other providers in each electrical corporation’s  
33 distribution service territory from the number of kilowatthours  
34 provided by other providers as of the effective date of this section,  
35 to the maximum allowable annual limit for that electrical  
36 corporation’s distribution service territory. The commission shall  
37 review and, if appropriate, modify its currently effective rules  
38 governing direct transactions, but that review shall not delay the  
39 start of the phase-in schedule.

1 (c) Once the commission has authorized additional direct  
2 transactions pursuant to subdivision (b), it shall do ~~all~~ *both* of the  
3 following:

4 (1) Ensure that other providers are subject to the same  
5 requirements that are applicable to the state's three largest electrical  
6 corporations under any programs or rules adopted by the  
7 commission to implement the resource adequacy provisions of  
8 Section 380, the renewables portfolio standard provisions of Article  
9 16 (commencing with Section 399.11), and the requirements for  
10 the electricity sector adopted by the State Air Resources Board  
11 pursuant to the California Global Warming Solutions Act of 2006  
12 (Division 25.5 (commencing with Section 38500) of the Health  
13 and Safety Code). This requirement applies notwithstanding any  
14 prior decision of the commission to the contrary.

15 (2) (A) Ensure that, in the event that the commission authorizes,  
16 in the situation of a contract with a third party, or orders, in the  
17 situation of utility-owned generation, an electrical corporation to  
18 obtain generation resources that the commission determines are  
19 needed to meet system or local area reliability needs for the benefit  
20 of all customers in the electrical corporation's distribution service  
21 territory, the net capacity costs of those generation resources are  
22 allocated on a fully nonbypassable basis consistent with departing  
23 load provisions as determined by the commission, to all of the  
24 following:

25 (i) Bundled service customers of the electrical corporation.

26 (ii) Customers that purchase electricity through a direct  
27 transaction with other providers.

28 (iii) Customers of community choice aggregators.

29 (B) If the commission authorizes or orders an electrical  
30 corporation to obtain generation resources pursuant to subparagraph  
31 (A), the commission shall ensure that those resources meet a system  
32 or local reliability need in a manner that benefits all customers of  
33 the electrical corporation. The commission shall allocate the costs  
34 of those generation resources to ratepayers in a manner that is fair  
35 and equitable to all customers, whether they receive electric service  
36 from the electrical corporation, a community choice aggregator,  
37 or an electric service provider.

38 (C) The resource adequacy benefits of generation resources  
39 acquired by an electrical corporation pursuant to subparagraph (A)  
40 shall be allocated to all customers who pay their net capacity costs.

Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts.

(D) It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume.

~~(3) Ensure~~

*(d) (1) In authorizing additional direct transactions pursuant to subdivision (b), the commission shall ensure that entities that are currently treating and remediating groundwater that federal, state, or local agency previously identified as contaminated at a site that is listed by the United States Environmental Protection Agency on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) have the highest priority in acquiring electric service by direct transactions.*

*(2) An entity that is authorized to engage in a direct transaction pursuant to this subdivision and subdivision (b) shall use moneys saved as a result of the direct transaction for activities related to treating or remediating contaminated groundwater at the site.*

*(3) An entity that is authorized to engage in a direct transaction pursuant to this subdivision and subdivision (b) shall electronically report to the Energy Division of the commission the total yearly savings resulting from the direct transaction and the expenditure of those savings. The commission may include this information in the annual report required pursuant to Section 316.*

~~(d)~~

(e) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical corporations cease procuring capacity through a centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c) shall again apply.

(2) If the use of a centralized resource adequacy mechanism is authorized by the commission and has been implemented as set forth in paragraph (1), the net capacity costs of generation resources that the commission determines are required to meet urgent system or urgent local grid reliability needs, and that the commission authorizes to be procured outside of the Section 380 or Section 454.5 processes, shall be recovered according to the provisions of paragraph (2) of subdivision (c).

(3) This subdivision does not supplant the resource adequacy requirements of Section 380 or the resource procurement procedures established in Section 454.5.

(e)

(f) The commission may report to the Legislature on the efficacy of authorizing individual retail end-use residential customers to enter into direct transactions, including appropriate consumer protections.

*SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*